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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AMD PROTECTION OF MINORITIES ON ITS FORTY-THIRD SESSION

Report of Mr. L. Joinet, Chairman of the Sub-Commission at its forty-third session, prepared in accordance with paragraph 20 of Commission on Human Rights resolution 1991/56

Introduction

1. In resolution 1991/56 entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities" adopted at its forty-seventh session on 6 March 1991, the Commission on Human Rights reaffirmed its desire to give considered attention to the work of the Sub-Commission in order to enhance the effectiveness of both bodies in their respective roles and made a number of observations and recommendations to the Sub-Commission, which essentially concerned the following points:

Intensification of the dialogue between the Commission and the Sub-Commission through their respective chairpersons;

Enhancement of the independence of the Sub-Commission and of the experts who compose it;

Improvement of its methods of work in order better to assist the Commission in its task, by giving priority to rationalization and simplification of studies and reports and to the adoption of resolutions, so as to rationalize their number.

2. In paragraph 20 of its resolution, the Commission requested the Chairman of the Sub-Commission to report to the Commission on the implementation of those guidelines. This report by the Chairman of the forty-third session of the Sub-Commission to the Commission on Human Rights, at its forty-eighth session, has been prepared in accordance with those provisions.

3. In accordance with the Commission's wishes, the report focuses in particular on the above three points and on the relevant initiatives required in order to respond to those recommendations, to which the Commission attaches particular importance.

A. Initiatives taken by the Sub-Commission to improve coordination with the Commission on Human Rights and with the treaty bodies

4. The work of the forty-third session demonstrated that, while the question of dialogue with the Commission remains fundamental, the overall problem posed is that of better coordination among the various United Nations treaty bodies. Thus the first steps towards coordination were made, at the previous session, with the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.

1. Intensification of the dialogue with the Commission on Human Rights

5. The Commission will recall that a first step was taken in 1989, during the forty-first session of the Sub-Commission, which was attended by the then Chairman of the Commission. In 1990, pursuant to paragraph 17 of Commission resolution 1990/64, the Chairman of the forty-sixth session, Mrs. Quisumbing, in turn presented the Commission's observations and recommendations.

6. In resolution 1991/56, the Commission repeated the invitation to its Chairman to inform the Sub-Commission on the debate concerning the Sub-Commission's report. In response to that invitation, Mr. E. Bernales Ballesteros addressed the Sub-Commission at its 14th meeting (see E/CN.4/Sub.2/1991/SR.14) in his capacity as Chairman of the forty-seventh session of the Commission.

7. Mr. Bernales Ballesteros said that the Commission wished further to enhance the direct communications between itself and the Sub-Commission and expressed gratification that for the third time the Chairman of the Commission was addressing the Sub-Commission in his capacity as Chairman. He recalled that in resolution 1991/56 the Commission had noted with appreciation the intensified dialogue between the Commission and the Sub-Commission through mutual information by their respective chairpersons and expressed the wish that the dialogue should continue. He reasserted the specific nature of the Sub-Commission's mandate and drew attention to the Commission's concerns regarding the performance of the mandate, which were as follows:

> The objectivity and impartiality that should mark the Sub-Commission, and the concomitant independent status of its members; in that connection he emphasized that in resolution 1991/56 the Commission had expressed the wish that only individuals who possessed genuine expertise in the field of human rights should be proposed as members and as alternates;

The valuable contribution made to the work of the Commission by the draft instruments, studies and reports. In respect of the latter two types of document, Mr. Bernales Ballesteros said that limitation of their number would allow them to be carried out far more thoroughly;

The contribution made to the Commission by the Sub-Commission's annual review of further developments in the field of human rights;

The growing number of resolutions and decisions submitted to the Commission which, he emphasized, was such that they could no longer be given all necessary attention, a fact that should lead the Sub-Commission to review its current practice;

The importance attached by the Commission to the discussions and suggestions of the sessional Working Group set up by the Sub-Commission in decision 1989/104 to reform its methods of work.

8. In conclusion, Mr. Bernales Ballesteros explained that the international community's growing demands in the field of human rights were so great that it was essential for both the Sub-Commission and the Commission to make the best possible use of their resources, time and energy, primarily through close and continuing coordination.

9. After thanking the Chairman of the Commission on behalf of all his colleagues, the Chairman of the Sub-Commission opened the debate.

10. At the request of several members of the Sub-Commission, it was decided to hold a closed meeting in order to allow each of the Sub-Commission's experts to speak without restraint, and thus constructively, with the Chairman. That unprecedented decision made it possible for the first time to address reforms of the Sub-Commission's methods of work, including their relationship with the methods of work of the Commission. Some participants pointed out that however justified some of the observations concerning the proliferation of studies and reports were, the following facts should be borne in mind:

Human rights were of increasing importance in international politics, a development that was part of the reason for the increase in the number of studies and reports requested by other sources, and most frequently by the Commission itself;

It was pointed out that in many cases the Commission, despite criticizing the number of studies, approved them without objection. It was further emphasized that the comments made by the Commission concerned the number of studies rather than their substance;

It was also observed, with regard to the duplication that might occur as a result of the adoption of resolutions on situations which had already been brought to the attention of the Commission, that the Sub-Commission was composed of independent experts and therefore its members could hold differing assessments of the human rights situation in a given country. Moreover, the repetition of a resolution from one year to the next could also be explained by the persistence of violations in the country concerned;

Lastly, many participants stressed that the Commission should employ its full authority to ensure that the resources of the Centre for Human Rights matched the growing demands made on it, taking into consideration the pre-eminent position that human rights had now acquired in international relations.

2. Establishment of coordination with the Committee on the Elimination of Racial Discrimination

11. Pursuant to paragraph 6 of its resolution 1990/1 the Sub-Commission held a joint meeting with the Committee on the Elimination of Racial Discrimination. The discussion focused on the best means of ensuring mutual coordination in the future, and the following suggestions were adopted:

Identification of issues of common interest;

Appointment of a representative of each body to ensure inter-sessional coordination. Mr. Ferrero Costa was appointed for the Committee and Mr. Heller for the Sub-Commission;

Consideration of a joint contribution to the preparations for the World Conference on Human Rights in 1993.

12. The Committee and the Sub-Commission expressed their appreciation of the value of such coordination and agreed to include a further joint meeting on their agendas.

3. Prospects for coordination with the Human Rights Committee

13. During the debate on agenda item 3, entitled "Review of the work of the Sub-Commission", a Government observer expressed concern at the danger of the Sub-Commission usurping the prerogatives of the Human Rights Committee. Accordingly, the Chairman of the Sub-Commission contacted the Chairman of the Committee, who reassured him in that respect. In addition, the two Chairmen agreed to meet again to exchange opinions as to the best means of enhancing coordination of the work of their respective bodies.

B. Enhancing the independence of the Sub-Commission's experts

14. Participants agreed that since the Sub-Commission had been established significant progress had been made in that respect. Attention was drawn to the following innovations:

The appointment of members of the Sub-Commission by election, and payment of remuneration by the United Nations;

The election of alternates, who previously were merely appointed by the member;

Applicability to the members of the Sub-Commission of the privileges and immunities enjoyed by United Nations staff members (Advisory opinion of the International Court of Justice dated 15 December 1989 - case of Mr. Dumitru Mazilu);

The introduction of the secret ballot, pursuant to Economic and Social Council resolution 1991/32, for the adoption of resolutions and decisions concerning the situation of human rights in a particular country. The first lessons that could be drawn from the use of the secret ballot were as follows:

The independence of the Sub-Commission was reinforced, as the secret ballot allowed the experts to act more independently;

The tone of the debates was less heated and more serene although in some rare cases in which consensus used to be the rule (for example, apartheid), adoption without a vote was not possible as a secret ballot had been requested by a member of the Sub-Commission. However, that had not undermined the authority of the resolutions in question which had been adopted by very large majorities. The end result had been a degree of clarification which was certainly valuable;

There had been an appreciable saving of time as a result of the significant decrease in the number of statements, which in the past had frequently led to a heated debate, and which had been rendered pointless by the secret ballot.

C. Steps taken by the Sub-Commission to improve its methods of work

15. From the outset of the forty-third session, the Chairman invited the Sub-Commission to devote a considerable proportion of its debates to considering means of improving its methods of work, including the preparation of specific proposals, some of which could be immediately applied. The Sub-Commission concerned itself with the improvement of its methods of work more especially in connection with agenda item 3, and particularly when it adopted the report of the sessional Working Group established by resolution 1989/104 to examine the reform of its working methods. The Working Group, chaired by Mr. Theo van Boven, comprised five members chosen from among the various regional groups. Its discussions focused in particular on the following points:

1. Measures to ensure a more balanced allocation of speaking time

16. Over the years, the Sub-Commission has had to face a situation in which the duration of its session (20 days) has remained the same, but the number of participants has constantly increased at each session. This is true:

Of the experts, who increased from 14 in 1959 to 18 in 1967 and have numbered 26 since 1969;

Of the Government observers: only 1 was registered in 1952, 4 in 1962, 18 in 1973, 45 in 1982, 82 in 1990 and 86 in 1991;

Of the non-governmental organizations: there were 77 in 1989, 92 in 1990 and 171 in 1991.

17. In order to clarify the facts behind the problem, the Chairman had prepared statistics of the time taken up by each speaker at the previous session. The statistics challenged a number of preconceptions; in particular, they demonstrated that over the duration of the session, 11 days of floor time was taken up by the experts, while non-governmental organizations had three days' speaking time and Governments only one day. The other five days were consumed by procedural matters, the Secretariat, the three sessional working groups, suspensions of meetings and delays.

18. For reasons of efficiency, the Sub-Commission decided to discuss in a closed meeting how better to use its working time and in particular the time allotted to speakers. The following innovations were adopted:

In view of the particularly detailed observations contained in the document entitled "Annotations to the provisional agenda" and in agreement with Mr. Martenson, it was decided to eliminate, as from the current session, the presentation of each agenda item which has traditionally been done by the Under-Secretary-General. To offset this, the Under-Secrtary-General extended his opening statement, and was thereby able to address substantive issues. The hope was expressed that the initiative would be repeated;

Governments that wished to speak in exercise of their right of reply should be given the floor last, in order to allow them to group their replies if appropriate;

Speakers should be encouraged to exercise self-discipline by the sending of a message to indicate to each speaker that the time allotted to him has expired. That practical measure proved particularly effective as during the session only four speakers exceeded the time allotted to them, which was as follows:

Members of the Sub-Commission: from 10 to 15 minutes maximum;

Government observers: 10 minutes (plus 6 minutes in the case of items covering several topics); if necessary, 5 minutes to exercise the right of reply followed by 3 minutes additional right to respond and the possibility to speak for a further 3 minutes when a resolution was voted upon;

Non-governmental observers: 10 minutes (plus 6 minutes in the case of items covering several topics).

A series of coordination meetings held on the matter between the 1990 session and the 1991 session by the outgoing Chairman and Mr. Louis Joinet, who had been given a mandate to that effect, were a considerable help in making these results possible.

2. Initiatives concerning the preparation of studies and reports

19. In its report (E/CN.4/Sub.2/1991/16), the Working Group entrusted with making recommendations on the reform of the Sub-Commission's methods of work suggested the following measures in response to the Commission's concerns:

(a) Updated list of studies and reports. The Secretariat should continue to update the list of studies both those under way and those completed, established by Sub-Commission decision 1989/103 (E/CN.4/Sub.2/1990/2);

(b) Preparatory document for any study or report. Any new study should be preceded by a preparatory document, in the form of a working paper, specifying the objective and overall approach of the study, its value and a plan of work;

(c) Number of studies and reports. No new study should be started until an ongoing study has been completed (with the exception of periodic reports). It might be possible to set a ceiling on the number of studies under way. In order to encourage self-control in respect of studies, the members of the Sub-Commission should consult one another in order to establish priorities;

(d) Selection of rapporteurs. Although special expertise of the subject to be dealt with remains an important factor in the selection of a rapporteur, the principle of equitable geographical distribution should also be taken into account, even if that might in some cases mean appointing two or more rapporteurs;

(e) Duration of studies. If during the preparatory phase the rapporteur realizes that completion of the study will require more than three years after it has been authorized by the competent body, he should furnish reasons and explanations. Several experts felt that a number of practices that had gradually become established should be called into question. The case of experts who, after having been appointed rapporteurs, are not re-elected and are thus no longer members of the Sub-Commission, although they remain rapporteurs, or who sit on the Sub-Commission as alternate members, was raised;

(f) Appointment of commentators (advisory rapporteurs). In order better to prepare the Sub-Commission's debates when it considers studies and reports, and in full agreement with the author, one or more members of the Sub-Commission could be designated thoroughly to read the document in association with the author. The commentator, who would act as an advisory rapporteur, could introduce the discussion at the following session, in particular drawing attention to important or controversial points;

(g) Follow-up mechanism. For each session the Secretariat would draw up a short note regarding the follow-up given to the recommendations made in studies which have been completed and submitted to the Sub-Commission, or, as appropriate, to the Commission for final consideration;

(h) Publicity for reports and studies. It was suggested that studies and reports should be adequately disseminated, thereby implying the need for greater publicity. In that connection, it was requested that a pamphlet containing a list of completed studies together with a summary of their contents should be published periodically. The United Nations World Public Information Campaign on Human Rights could be associated with that initiative;

(i) Financial implications of studies and reports. It was suggested that, once a study has been completed, the Secretariat should provide information on actual expenditure on the study as compared with the estimates given in the statement of financial implications.

3. Initiatives concerning the submission and adoption of resolutions

20. The Commission has frequently drawn attention to what it considers to be the excessive number of resolutions submitted to it. Some participants pointed out that this criticism could be better appreciated if a distinction was made between those resolutions that require no further action on the part of the Commission, and those with implications for its work (for example, submission to the Commission of a note by the Secretariat), or which are transmitted for adoption to the Commission, or to the Economic and Social Council (for example, the resolution to authorize a secret ballot).

21. One suggestion, which was not adopted, was that any draft resolution without at least three sponsors could be withdrawn by the Chair, acting in consultation with the Bureau. However, a new practice was adopted whereby, in agreement with the sponsors and the sectors concerned, the tabling of a resolution can be replaced by a unanimously approved statement by the Chairman.

4. Initiatives concerning the rationalization of the agenda

22. In addition to the decision adopted at the forty-third session to eliminate the traditional half-day suspension of work at the beginning of the session, the following three suggestions, which have not yet been submitted for adoption, were put forward:

(a) Agenda item 4: Further developments: This item is by its very nature inflationary. Accordingly, at each session the Secretariat should identify in a note those issues which have been discussed under this agenda item at a number of sessions, and which could therefore no longer be considered new developments but should be taken up under the appropriate agenda items;

(b) Agenda item 5: Elimination of racial discrimination and apartheid: The issue of apartheid is dealt with under any one of three agenda items (5 (a), 5 (b), 10). This dispersion does not allow efforts against apartheid to be focused. Accordingly, it would be opportune to group statements against apartheid under agenda item 5 (b), which specifically concerns apartheid and is devoted solely to consideration of the annual report by Mr. Khalifa on the adverse consequences of economic assistance to apartheid. Some experts expressed reservations on the grounds that such a change might be interpreted as attributing less attention to the struggle against apartheid;

(c) Overall reorganization of the agenda: The agenda currently comprises 4 procedural items and 17 substantive ones. It was suggested that the latter should be grouped together under the following items:

Civil and political rights;

Economic, social and cultural rights;

Elimination of discrimination and protection of minorities;

Promotion of human rights and consideration of protective machinery.

This proposal, which was made by a group of non-governmental organizations, appeared interesting, but a thorough study of its technical implications is required, and in particular of the redistribution of the time allotted to speakers. Accordingly, consideration of the proposal was postponed, together with consideration of a comprehensive proposal for the reform of the rules of prodedure, prepared by one of the members of the Sub-Commission.

Recommendations and conclusion

23. The forty-third session of the Sub-Commission may no doubt be viewed as one of searching reflection and of proposals designed to pave the way for an effective reform of the Sub-Commission's methods of work. While it was possible to implement some of the measures proposed at the forty-third session itself, a number of them require further examination for an assessment of their practical implications, in conjunction with the Secretariat, before a final decision is proposed.

24. For that reason, the Sub-Commission, on the basis of resolution 1991/56 cited above, in which the Commission encouraged it to continue and finalize its discussions on the best way to improve the efficiency of the debate while attaching high priority to those efforts, decided to propose that the Commission should authorize the establishment, on an exceptional basis in 1992, of an intersessional working group on the reform of the methods of work of the Sub-Commission. The members of the group, who would be appointed by the Chairman of the forty-third session of the Sub-Commission, after the necessary consultations and on the basis of equitable geographic distribution, would meet prior to the forty-fourth session so that the reform could be finally adopted by the Sub-Commission in August 1992.

25. It was planned that the group would have as its task the elaboration of proposals for the rationalization of the work and agenda of the Sub-Commission, in particular in regard to the following points:

Preparation and submission of working documents, studies and reports;

Submission and adoption of resolutions;

Structure of the agenda;

Methods and means of dealing with violations of human rights;

Role of alternates.